S. B. Civil Second Appeal No. 176/2007
(Madhav Garg Vs. Prakash Chand)

22.2.2007

Hon'ble Mr. Justice R.M. Lodha

Mr. Rajeev Surana for the appellant
Mr. Maneesh Sharma for the respondent

The suit for eviction filed by the plaintiff (respondent) was decreed by the Trial Court against the defendant (appellant) on the following two grounds:-

(i) that the defendant committed default in payment of rent for more than six months; and

(ii) that the premises were required reasonably and bonafide by the landlord.

2. It may be noticed that the Trial Court struck out the defendant's defence since he failed to pay / deposit monthly rent in time U/s. 13 (4) of the Rajasthan Rent Control Act. It is not in dispute that the order striking out the defence was carried in appeal by the tenant but he failed.

3. The Trial Court recorded the finding that the

landlord would suffer greater hardship if the eviction decree was denied and that his need shall not be met by partial eviction.

4. The judgment and decree passed by the Trial Court on 28th October, 2004 was carried in appeal by the tenant. The appeal was dismissed on 14th November, 2006. Hence the second appeal.

5. The counsel for the appellant (tenant) submitted that the Courts below did not advert to the issue of default properly and failed to record any specific finding that the defendant committed any default in payment of rent for the period from 1.4.1994 to 31.8.1995.

6. The submission is not meritorious. The appeal court categorically held that the tenant committed default in payment of rent for the period from 1st April, 1994 to June, 1995. Not only that both the Courts noticed that the tenant

failed to comply with the requirement of Section 13 (4) after determination of provisional rent and, therefore, the defendant's defence was struck off. No illegality has been shown in the order striking off the defence of the defendant. The findings thus recorded by the Courts below on the ground of default cannot be said to suffer from any legal infirmity.

7. The counsel for the appellant then submitted that the Appeal Court failed to consider the challenge to the finding recorded by the Trial Court on the question of reasonable and bonafide necessity. He submitted that the Appeal Court has erroneously recorded that except challenge to the finding on issue No. 1, no other finding was challenged by the defendant.

8. The Appeal Court has categorically recorded that, besides challenge to the finding on issue No. 1, the other findings adverse to the

defendant in the judgment of the Trial Court were not challenged. The submission of the counsel for the appellant that in fact such challenge was made cannot be accepted. Had it been so, the remedy to the tenant was to seek review of the judgment. That was not done.

9. The appeal has no merit. It does not give rise to any substantial question of law. Second appeal is dismissed in limine.

10. At this stage, the counsel for the appellant prays for some reasonable time to enable the appellant to vacate the suit premises. The counsel for the respondent has left the matter to the Court.

11. Taking into consideration the fact that the premises are used by the tenant for commercial purpose, I grant the appellant time upto 29th February, 2008, for vacation of the suit premises subject to following conditions:-

i) that the appellant shall file an undertaking before this Court within three weeks from today that he shall vacate the suit premises on or before 29th February, 2008 and hand over the possession thereof to the respondent and that he will not create any third party right or interest therein in any manner whatsoever.

ii) that the appellant pays / deposits the arrears of rent, if any, upto the month of January, 2007 within one month from today and also deposits the compensation at the rate of monthly rent for the period from February, 2007 to February, 2008 in advance within one month from today.

12. Upon non-compliance of the aforesaid conditions or any one of them, the time granted to the appellant shall stand revoked and the decree holder shall be at liberty to execute the decree forthwith.

R.M. Lodha, J.

DK/-